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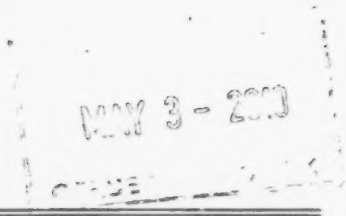

In The Supreme Court of the United States

RUPERT M. POLLARD,
Petitioner,

v.

ESTATE OF MARIE A. MERKEL, MATTHEW R. POLLARD, Independent Executor,
Respondents.

On Petition for Writ of Certiorari To The U.S. Court of Appeals for the Fifth Circuit

PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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PETITIONER'S REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

Pursuant to Rule 15.6, of the Rules of the Supreme Court of the United States, Petitioner R. M. Pollard, hereby files his Reply Brief in support of the Petition for Certiorari, and states the following.

I.

CERTIORARI SHOULD BE GRANTED BECAUSE THE DECISION OF THE COURT OF APPEALS IS IN DIRECT CONFLICT WITH DECISIONS OF THIS COURT

Petitioner does not argue that the Fifth Circuit misapplied the law as Respondent claims, but rather that the Court of Appeals decision is in direct contravention to this Court's prior decisions in *Ankenbrandt v. Richards*, 504 U.S. 689 (1992) and *Marshall v. Marshall*, 547 U.S. 293 (2006). In *Ankenbrandt*, this Court expressly stated that the domestic relations exception to jurisdiction is to be limited to "cases involving the issuance of a divorce, alimony, or child custody decree." 504 U.S. at 704. Here, given the undisputed fact that the State of Texas has an interest in establishing and maintaining uniform domestic relations law and given the fact that family relations are a traditional area of state concern, the District Court in this case was not called upon to grant a divorce, or determine alimony or child custody issues. Instead, as a necessary prerequisite to determination of the validity of a federal tax lien for

which the District Court had a grant of express statutory jurisdiction pursuant to 28 U.S.C. §2410, all that the District Court was called upon to do was to interpret prior decisions of the Texas state courts by determining whether or not Petitioner was married to the decedent when the tax liens were filed. This ruling by the District Court did not require issuance of a divorce decree, application of any state policy rules, or determination of any underlying legislative policies regarding family relations, but instead required only judicial interpretation of prior judicial decisions.

Pursuant to Rule 10 (c), SUP. CT. RULES, granting of a petition for certiorari is appropriate where the decision of the Court of Appeals is in conflict with a decision of this Court. This includes cases where the Court of Appeals decision is apparently in conflict with the decisions of the Supreme Court. *Oklahoma Tax Comm'n v. Citizen Band Potawatomi Indian Tribe*, 498 U.S. 505, 509 (1991); *United States v. Doe*, 465 U.S. 605, 610 (1984); *Lugar v. Edmonson Oil Co.*, 457 U.S. 922, 926 (1982); *Army & Air Force Exch. Serv. v. Sheehan*, 456 U.S. 728, 733 (1982). Although Petitioner contends that the message of this Court in *Ankenbrandt v. Richards*, 504 U.S. 689 (1992), as explained in *Marshall v. Marshall*, 547 U.S. 293 (2006), is crystal clear, to the extent that there might be some confusion or ambiguity, the granting of certiorari to eliminate any possible confusion is also appropriate under Rule 10(c). *Cook County, Ill. v. United States ex rel. Chandler*, 538 U.S. 119, 122-125 (2003); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l*

Planning Agency, 535 U.S. 302, 320-321 (2002); *SEC v. United Benefit Life Ins. Co.*, 387 U.S. 202, 207 (1967).

II.

ABSTENTION IN DEFERENCE TO PENDING STATE COURT LITIGATION IS NOT APPROPRIATE IN THIS INSTANCE

Respondent seeks to persuade this Honorable Court to deny certiorari and to uphold the abstention decision of the Fifth Circuit because the marital status issue was allegedly already before the Texas state courts. This argument conveniently ignores the indisputable fact that it was Respondent who initiated the District Court litigation giving rise to the decision of the Court of Appeals in this case. Not satisfied with the adverse result obtained in litigation which Respondent had initiated, it is now seeking to pretend that such litigation should never have been filed in the first place. Furthermore, it is incorrect to allege that determination of the ongoing marital relationship is ongoing between Petitioner and Marie Merkel, Deceased. In *In the Matter of the Marriage of Marie A. Merkel and Rupert M. Pollard*, Cause No. 92-2980-Z, in the District Court, 265th Judicial District of Dallas County, Texas, the trial court has ordered that the divorce action be dismissed for want of jurisdiction due to Ms. Merkel's death on October 10, 2004. App. at 1.

Further, the Probate Court in No. 05-0375-P3, *In the Estate of Marie A. Merkel, Deceased*, Probate Court Number Three of Dallas County, Texas, has

found that Petitioner is entitled to an accounting from the Executor because he was married to the decedent at time of her death. App. at 2-3.

Therefore, contrary to the impression sought to be conveyed by Respondent, ongoing rulings regarding the marital status of Petitioner and Marie Merkel is not "pending" as claimed, but rather has already been determined.

III.

THIS CASE IS APPROPRIATE FOR SUMMARY DISPOSITION

The Supreme Court need not, as implied by Respondent's argument, involve itself in some complicated family law dispute with extensive consideration of Texas family law issues. Pursuant to Rule 16.1, SUP. CT. RULES, this Court may grant the petition and enter an order for summary disposition on the merits. This could involve a summary reversal because full briefing and oral argument would be an unnecessary imposition upon the scarce judicial resources of the Supreme Court, *see, e.g.*, *Keney v. New York*, 388 U.S. 440-453 (1967), or an order vacating and remanding for further consideration in light of decisions of this Court. *Youngblood v. West Virginia*, 547 U.S. 867 (2006); *Robinson v. Story*, 469 U.S. 1081 (1984). This type of disposition would be appropriate here, in light of the analysis and reasoning which this Court has already supplied in *Ankenbrandt v.*

Richards, 504 U.S. 689 (1992), and *Marshall v. Marshall*, 547 U.S. 293 (2006).

CONCLUSION

Petitioner respectfully prays that the decision of the Court of Appeals dismissing this action be reversed, that the decision of the District Court be affirmed, or in the alternative that this cause be remanded for consideration on the merits and the decision of the District Court affirmed, and that Petitioner recover his costs of appeal and general relief.

Respectfully submitted,

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Dated: May 3, 2010.

IN THE MATTER OF THE MARRIAGE OF
MARIE A MERKEL and RUPERT M POLLARD

No 92-2980-Z

IN THE DISTRICT COURT, 265TH JUDICIAL
DISTRICT, DALLAS COUNTY, TEXAS

ORDER ON MOTION TO RENDER DECISION

After considering movant Rupert M Pollard's Motion to Render a Decision and to Sign the Order, the response, the evidence on file, and arguments of counsel, the court GRANTS the motion and orders the following

a The February 23, 2005 Order Dismissing the Case for Want of Prosecution is vacated as a void order signed after the court's plenary power expired

b The divorce action in this case is dismissed for want of jurisdiction in light of Marie A Merkel's death on October 10, 2004

SIGNED on September 12, 2008.

/s/ David Lopez
JUDGE PRESIDING

IN THE ESTATE OF
MARIE A. MERKEL, DECEASED

No. 05-0375-P3

IN THE PROBATE COURT, NUMBER
THREE (3) OF DALLAS COUNTY, TEXAS

ORDER

Came on to be heard and considered the Motion for Accounting filed herein by R.M. Pollard and the Objections filed thereto by Matthew Pollard as Independent Executor of this Estate. The Court having reviewed the pleadings and caselaw filed herein and heard the arguments of counsel finds that R.M. Pollard is a party interested in this case because he was married to the Decedent at the time of her death, and he is thereby entitled to an accounting by the Executor.

It is accordingly ORDERED that Matthew R. Pollard shall deliver a full and complete accounting of this Estate from the date of his appointment until the present. Said accounting shall be delivered to counsel for R.M. Pollard within 60 days of this Order.

SIGNED on this the 12th day of June, 2009.

/s/ Michael E. Miller
JUDGE PRESIDING

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